



The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

### **ISSUES**

The Administrative Law Judge found the Workers Compensation Fund responsible for seventy-five percent (75%) of the costs and benefits related to this proceeding. The Workers Compensation Fund filed its request for review and requests the Appeals Board review the following issues:

- (1) Whether claimant met with personal injury by accident on the dates alleged;
- (2) The liability of the Workers Compensation Fund, if any; and,
- (3) Whether the Fund is entitled to a credit pursuant to K.S.A. 44-510a.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds, as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be modified to assess the Workers Compensation Fund with all the liability in this proceeding.

- (1) Because the parties tried the case as an accidental injury rather than an occupational disease, this review is conducted by applying the law applicable to accidental injuries under the Workers Compensation Act. K.S.A. 44-555b(a) provides:

“ . . . The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.”

Based upon the evidence presented, the Appeals Board finds claimant had a permanent impairment of function as a result of a permanent condition of chronic dermatitis as early as April 1990 and experienced permanent aggravation of the condition as a direct result of her working around composites and other materials at work with respondent until her termination in February 1992. Because claimant's symptomatology and condition worsened and deteriorated until her termination on February 13, 1992, claimant's last day of work is designated the date of accident for purposes of computation of this Award.

Claimant began working at Boeing in 1987 as a plastic bench mechanic. Claimant worked with composite material and her hands were exposed to chemicals, Kevlar, graphite, fiberglass, ketones, and other irritants. In 1989, claimant's hands began breaking out and began to itch and bleed. Claimant told her supervisor, but continued working. In December 1989, claimant consulted Dr. Passman, a dermatologist, who diagnosed claimant as having dyshidrosis. At this point in time, claimant's hands were cracked, red, swollen, and blistered. Claimant advised her supervisor about her condition and continued to work.

By March 5, 1990, claimant had a severe breakout of dermatitis along with a red rash and blisters on her hands. Also, claimant had a rash on her neck, chest, arms and face, and her skin was cracking. Claimant reported to Boeing Central Medical where contact dermatitis was diagnosed and she was referred to another dermatologist, Dr. Mendiones. Claimant was taken off work for approximately one month, to the latter part of April 1990. When claimant returned to work in April 1990, Boeing Central Medical placed permanent restrictions upon her to avoid the composite materials. Also, as claimant had been advised by Dr. Mendiones to avoid the composite materials, claimant relayed this information to her supervisors. Although she returned to the same department and same job classification, Boeing modified aspects of her job in an attempt to accommodate her condition.

Claimant was off taken off work July 3, 1990 through November 24, 1990 as a result of dermatitis on her hands, chest, legs, and face. Again, Dr. Mendiones advised claimant to avoid the composites she was working around and advised claimant to change her job. Claimant talked to the factory manager regarding Dr. Mendiones' advice. In November 1990, claimant returned to the same job and worked until April 1991 when she was off for approximately two months for non-related medical reasons. Claimant then returned to work for Boeing until February 13, 1992, when she was taken off work and told to stop working by board-certified dermatologist, John E. Schlicher, M.D.

The three physicians who testified in this proceeding believe claimant's dyshidrosis or atopic dermatitis had evolved into chronic dermatitis and was probably a permanent condition by the time she had her severe flare-up in March and April of 1990. Boeing's Dr. Zimmerman, and claimant's Dr. Schlachter, believe claimant had a one percent (1%) permanent partial impairment of function to the body as a whole as a result of the chronic dermatitis as of April 1990, and that the permanent impairment of function increased as a result of claimant's continued employment and exposure to the composite materials at Boeing after that date. Dr. Schlicher is not as definite regarding claimant's increase in permanent impairment of function, but believes continued exposure to irritants after April 1990 could make the condition more severe although there is no way to prove or quantify it.

Based upon the testimony of the doctors, especially that of Dr. Schlachter, the Appeals Board finds that claimant's condition was permanently aggravated as a result of her work activities for Boeing after her return to work in April 1990. As explained by Dr. Schlachter, the condition of dyshidrosis eczema that claimant had before March 1990 predisposed her to become sensitized to irritants. Although dyshidrosis eczema is a relatively mild skin condition, in this instance it progressed to contact dermatitis as claimant's tolerance to irritants decreased and the skin gradually deteriorated. As Dr. Schlachter explained, the condition worsens as the chemicals destroy the oil glands in the skin. Once dyshidrosis evolves into contact dermatitis, a permanent impairment is created. Dr. Schlachter believes claimant would not have her present degree of permanent impairment of function but for the aggravation of her condition as a result of her continued work activities. Likewise, Dr. Zimmerman believes the dyshidrosis eczema or atopic dermatitis claimant had before March 1990 made her more susceptible to developing contact dermatitis and claimant would not have developed contact dermatitis but for the pre-existing atopic dermatitis.

Based upon the record considered as a whole, the Appeals Board finds the claimant had a pre-existing condition of dyshidrosis eczema, or atopic dermatitis, that was

permanently aggravated and had developed into contact dermatitis by March 1990. Further, the contact dermatitis worsened and evolved into chronic dermatitis which was permanently aggravated after April 1990 as a result of claimant's continued employment at Boeing and continued contact with chemicals, composite materials, and epoxies until February 1992, when claimant could no longer work. Therefore, the Appeals Board finds claimant did meet with personal injury by accident while working for the respondent through her last day of employment on February 13, 1992.

(2) The Workers Compensation Fund is responsible for all of the costs and benefits pertaining to this award.

K.S.A. 44-567 addresses the issue of apportionment of liability between the respondent and the Kansas Workers Compensation Fund. K.S.A. 44-567(a) provides:

"An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund."

K.S.A. 44-566(b) defines a handicapped employee as:

". . . one afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and the handicap is due to any of the following diseases or conditions:

17. Any other physical impairment, disorder or disease, physical or mental, which is established as constituting a handicap in obtaining or in retaining employment."

The Appeals Board finds the respondent retained claimant in its employ after April 1990, with knowledge of claimant's skin condition, designated by that time as contact dermatitis, and her condition was of such character at that time it constituted a handicap in obtaining employment. Knowledge on behalf of the respondent is proven as claimant reported her condition to her supervisors on numerous occasions and advised them of Dr. Mendiones' advice to avoid the composite material. Also, Boeing Central Medical as early as April 1990 placed permanent restrictions on claimant to avoid the composites. Although claimant returned to the same job after being released to return to work, after numerous absences beginning in March 1990, Boeing did attempt to accommodate claimant's

condition by modifying some aspects of her job. Claimant was satisfied with respondent's attempt to accommodate her and desired to continue working for the respondent as long as she could.

Based upon the evidence presented, the Appeals Board finds claimant would not have sustained a permanent aggravation of her skin condition to the extent of her ultimate disability, as a result of her work activities with the respondent from April 1990 through February 13, 1992, but for her pre-existing skin disorder. Therefore, K.S.A. 44-567(a)(1) requires that all compensation and benefits payable because of this injury and disability be assessed against the Workers Compensation Fund.

(3) The credit under K.S.A. 44-510a is not applicable in this proceeding. The credit only applies when the employee has received compensation or if compensation is collectible for personal injury by accident as provided in the Workers Compensation Act. Although hindsight may indicate that claimant could have claimed benefits for either an injury or disease that may have manifested itself as early as March 1990, claimant did not. As no such claim was made, claimant has neither received nor can she now collect workers compensation benefits for that manifestation. Therefore, K.S.A. 44-510a is inapplicable to this proceeding.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl entered in this proceeding on January 27, 1994, shall be, and hereby is, modified as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Glenda M. Wade, and against respondent, The Boeing Company of Wichita, and its insurance carrier, Aetna Casualty & Surety, and the Kansas Workers Compensation Fund, for an accidental injury occurring on February 13, 1992, and based on an average weekly wage of \$710.80, for 106.57 weeks of temporary total disability compensation at the rate of \$289.00 per week or \$30,798.73, followed by 308.43 weeks at the rate of \$206.14 per week or \$63,579.76 for a 43.5% permanent partial general body impairment of function making a total award of \$94,378.49.

As of February 17, 1995, there is due and owing claimant 106.57 weeks of temporary total disability compensation at the rate of \$289.00 per week or \$30,798.73, followed by 50.57 weeks of permanent partial disability compensation at the rate of \$206.14 per week in the sum of \$10,424.50, for a total of \$41,223.23 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$53,155.26 is to be paid for 257.86 weeks at the rate of \$206.14 per week, until fully paid or further order of the Director.

The Kansas Workers Compensation Fund is ordered to pay 100% of the costs and benefits pertaining to this proceeding.

The claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the Workers Compensation Fund to be paid as follows:

Kelly, York & Associates, Ltd.	
Deposition of Jerry D. Hardin	\$280.05
Deposition of Ernest R. Schlachter, M.D.	\$243.39
Deposition of John E. Schlicher, M.D.	\$393.35
Alexander Reporting Company	
Deposition of Karen Crist Terrill	\$197.84
Barber & Associates	
Transcript of Regular Hearing	\$274.55
Deposition Services	
Deposition of Kenneth D. Zimmerman, M.D.	\$306.40

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Frederick Haag, Wichita, KS  
Orvel Mason, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director